92-1184
Case No. _____

Supreme Court, U.S.
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IN THE SUPREME COURT OF THE UNITED STATES

October 1992 Term

FRANK ARENELLA, JR.,
Petitioner

vs.

COMMONWEALTH OF PENNSYLVANIA,
Respondent

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

WHEN THE INEFFECTIVENESS OF PRIOR COUNSEL IS RAISED BY SUBSEQUENT COUNSEL FOR THE FIRST TIME ON DIRECT APPEAL, MUST THE CASE BE REMANDED FOR HEARING ON INEFFECTIVENESS OF PRIOR COUNSEL IF THE RECORD ON DIRECT APPEAL SHOWS *PRIMA FACIE* EVIDENCE OF INEFFECTIVENESS OF PRIOR COUNSEL?

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TABLE OF AUTHORITIES

Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963) Page 23

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State v. VanCleave, 239 Kan. 117, 716 P.2d 580 (Kan. 1986) Page 11

REFERENCE TO OFFICIAL AND UNOFFICIAL REPORTS OF OPINIONS

1. Order of the Trial Court dated April 7, 1989 (Court of Common Pleas of the 26th Judicial District of Pennsylvania, Columbia County Branch)
   44 of 1988 Columbia County

   Set forth in full at Appendix Page

2. Trial Court Opinion dated August 29, 1989
   44 of 1988 Columbia County

   Set forth in full at Appendix Page

3. Superior Court of Pennsylvania Memorandum Opinion and Order of October 18, 1990
   01120 Philadelphia 1989, 407 Pa. Super. 641, 584 A.2d 1044 (1990)

   Set forth in full at Appendix Page

4. Superior Court of Pennsylvania Memorandum Opinion and Order of September 10, 1991
   01120 Philadelphia 1989, ____ Pa. Super. ____, 601 A.2d 367 (1991)

   Set forth in full at Appendix Page

5. Trial Court Opinion on Remand with Order dated November 7, 1990
   44 of 1988 Columbia County

   Set forth in full at Appendix Page

6. Order Denying Allowance of Appeal by the Supreme Court of Pennsylvania of April 21, 1992
308 M.D. 1991, 529 Pa. 667, 605 A.2d 332 (1992)

Set forth in full at Appendix Page

7. Order Denying Reconsideration by the Supreme Court of Pennsylvania of October 8, 1992
308 M.D. 1991, ____ Pa. ____, 614 A.2d 1138 (1992)

Set forth in full at Appendix Page

STATEMENT OF GROUNDS OF JURISDICTION

The Pennsylvania Supreme Court on October 8, 1992 denied reconsideration of its April 22, 1992 Order, which denied Allowance of Appeal and was served on Petitioner on April 23, 1992. The Request to Reconsider was filed on April 30, 1992.

The Petition for Allowance of Appeal and Reconsideration filed and denied in the Supreme Court of Pennsylvania raised the issue of ineffectiveness of counsel, a federal constitutional issue, pursuant to the Sixth Amendment, made applicable to the states by the Fourteenth Amendment.

Statutory Jurisdiction is raised under 28 U.S.C §1257(a) which allows the filing of this Petition for a Writ of Certiorari and is set forth verbatim at page 5 herein.

CONSTITUTIONAL PROVISION

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Sixth Amendment to the Constitution of the United States.

STATUTE

§1257. State courts; appeal; certiorari

(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

(b) For the purposes of this section, the term "highest court of a State" includes the District of Columbia Court of Appeals.

Public Law 91-358 as amended July 29, 1970, Title 1 §172(a)(1), 84 Stat. 590; Public Law 100-352 §3, June 27, 1988, 102 Stat. 662, 28 U.S.C.A. §1257.

STATEMENT OF THE CASE

Frank Arenella for the first time raised the issue of ineffectiveness of trial counsel when he filed a Petition for Allowance of Appeal to the Pennsylvania Supreme Court, see Appendix page Ap 45. This claim of ineffectiveness was raised at the first level of direct appeal where new counsel represented Mr. Arenella and based on the face of the record, the claim of ineffective assistance is solidly supported. Supported to the extent that evidence of the claim makes a finding of ineffective assistance of counsel more-likely-than-not should this case be remanded for an evidentiary hearing.

Despite these facts, the Supreme Court of Pennsylvania denied the Petition for Allowance of Appeal on April 22, 1992. This Denial was served on April 23, 1992 and on April 30, 1992 when, based on a

recent Supreme Court of Pennsylvania Opinion, reconsideration was requested, this too was denied on October 8, 1992, see Appendix page Ap 43.

Frank Arenella was accused of delivering 6.7 grams and 2.2 grams of cocaine on June 22 and July 20, 1987 respectively to an Informant Robert Builder. A search of Mr. Arenella's home resulted in the seizure of 774.5 grams of marijuana, two (2) tablets of LSD, 0.5 grams of methamphetamine, 36.5 grams of cocaine and various items of drug paraphernalia.

At trial, Mr. Arenella defended on the theory that Informant Builder (desperate to provide evidence of a crime to save himself) discovered on June 22, 1987 that the Arenella family was leaving on June 22nd for Florida and would not return until about July 20, 1987, see Notes of Testimony quoted herein at pp. 27. Informant Builder even told Trooper

Howel of Mr. Arenella's vacation, see p 32.

Further, Mr. Arenella testified that while he did possess the six (6) grams of marijuana found in his suitcase, he did not know that the 774 grams of marijuana (bags of marijuana), two (2) tablets of LSD, 0.5 grams of methamphetamine or 36.5 grams of cocaine were in his house, see pp. 30-31. Mr. Arenella testified that these drugs were found in his basement. He denied delivering cocaine to Informant Builder on either June 22 or July 20, 1987, see, p. 28. The jury was asked to infer that these "basement" drugs were planted when Mr. Arenella's family was in Florida.[1]

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[1]Although it is not being argued herein the jury never heard available testimony not offered at trial that a College Professor who was a friend of the Arenella's knew they were in Florida over the 4th of July, saw suspicious lights in the Arenella home basement. He was suspicious enough to stop, but failed to investigate further. See Appendix pages Ap 39-41. Trial Court Opinion of November 7, 1990.

Mr. Arenella was convicted on all of the previously described drug charges and sentenced to four to eight years.

At trial, prior counsel failed to object to Informant Builder's testimony because he had requested and not been provided Informant Builder's criminal record, plea bargain terms, and outstanding criminal charges known to the prosecutor, see Appendix page Ap 28. This failure to object and preserve for appeal is clear in the record. There are also strong indications in the record that Informant Builder had committed other offenses known to authorities, had a deal to testify and had carefully not been charged with any crimes in Columbia County, see pp. 33-35. Certainly, there is strong evidence in the record of other crimes known to the prosecutor or Investigating Trooper Howel that remain unprosecuted at the time of Informant Builder's testimony.

Mr. Arenella was also convicted of possession with the intent to deliver (a felony) two (2) tablets of LSD and 0.5 grams of methamphetamine based on evidence that on the record is strongly shown as likely insufficient, see pp. 36-37.

ARGUMENT

The state courts of highest jurisdiction are without guidance in determining if a claim of Constitutional ineffectiveness may be raised initially on appeal. The state courts of last resort are divided on two issues. First, may ineffectiveness of trial counsel be raised initially on appeal? A small group of state courts of last resort hold that ineffectiveness may never be raised on direct appeal unless it has been raised and addressed by the trial court.[1] Another small group of state courts of last resort hold that ineffectiveness may be raised initially on appeal and decided to avoid a

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[1] Harrison v. State (Ark.) 303 Ark. 247, 796 S.W. 2d 329 (1990); State v. Tsethlikai, 109 N.M. 371 (New Mexico App) 785 P.2d 282 cert. denied 109 N.M. 262, 784 P.2d 1005 (1989) citing, State v. Lujan, 79 N.M. 200 (New Mexico), 441 P.2d 497 (1968); and State v. VanCleave, 239 Kan. 117, 716 P.2d 580 (1986).

"plain error" or miscarriage of justice.[2] A third larger group of state's courts of last resort permit a claim of ineffectiveness raised for the first time on appeal--sometimes.[3] Others always permit ineffectiveness to be raised initially by new counsel on direct appeal.[4]

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[2]These cases and states are (S.D. 1987), State v. Aliberti, 401 N.W. 2d 729 (plain error) and (Mass. 1987), Commonwealth v. Reid, 400 Mass. 534, 511 N.E. 2d 331 (prevent miscarriage of justice).

[3]Blanco v. Wainwright (Florida) 507 So.2d 1377 (1987), (Generally ineffective assistance is not cognizable on appeal.) Antunovich v. State, 491 So.2d 328 (Florida App. 1 Dist. 1986). (Issue of ineffective assistance of counsel cannot be raised for the first time on appeal unless sufficient facts are of record to allow determination.)

[4]People v. Angelakos, 518 N.Y.S. 2d 784, 70 N.Y. 670, 512 N.E. 2d 305 (N.Y. 1987). (Court may consider ineffectiveness even though it was not raised below and in doing so must review the record); People v. Babbit, 45 C.3d 660, 755 P.2d 253 (Calif. 1988) cert. denied, Babbit v. California, 488 U.S. 1034, 109 S.Ct. 849, 102 L.E.2d 981 (Court may consider ineffectiveness in failing to object to closing argument

Continued on page 13

The problem facing the highest courts of Florida, New York, California and Pennsylvania is: if constitutional ineffectiveness may be raised for the first time on appeal--what then? Must all cases in which ineffectiveness is properly raised on direct appeal be remanded for a hearing in the trial court on the issue of ineffectiveness? Certainly, such a holding by this Honorable Court would occupy considerable state trial court time. The bare allegation of ineffectiveness of trial counsel by new appellate counsel would delay the direct appeals of these cases for at least a year. However, there must be cases on appeal where the

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Footnote 4 Continued from Page 12

raised on appeal); Commonwealth v. Fassett, 496 Pa. 529, 437 A.2d 1166, 1168 (Pa. 1981) (Ineffectiveness of trial counsel may be initially raised on direct discretionary appeal to the Supreme Court of Pennsylvania if it is the first stage at which there is different counsel.)

appellate record supports a prima facie showing of the constitutional ineffectiveness of trial counsel. If only those cases on direct appeal having a prima facie showing of ineffectiveness of trial counsel were remanded for an evidentiary hearing, many fewer cases would be remanded and a higher percentage of those that were would have an actual finding of ineffectiveness of trial counsel while on direct appeal.

This rule provides guidance to the state courts which cases initially alleging constitutional ineffective assistance of trial counsel must be remanded. The proper administration of justice requires a balance between two interests.

These interests are the ease and consistency which constitutional guidelines once established by this Honorable Court may be applied and do people in and

subject to the system of justice believe they have been fairly and justly treated.

It is unfortunately true that a certain percentage of persons in the criminal justice system will be convicted of crimes because they are poorly (constitutionally ineffectively) represented by their attorney. It is impossible to expect criminal Defendants to recognize ineffective assistance of counsel and raise it in trial court before their direct appeal begins.

It is fairer to expect new appellate counsel to review the past legal stewardship and raise issues of constitutionally ineffective representation. However, if the ruling by this Honorable Court was that because constitutional ineffectiveness is cognizable on collateral appeal, it would be simpler to apply a rule of law that stated: "No allegations of ineffectiveness raised on direct appeal

may be determined on direct appeal." Certainly, this would create a clear, easily applied standard for the state courts. And, all the state courts of last resort would consistently apply the federal constitution effective assistance of counsel as it applies to issues raised initially on direct appeal. All allegations of ineffectiveness of trial counsel not raised initially in the trial court would necessarily be addressed in collateral state permitted actions or federal habeas proceedings.

In any system of justice, however, those subject to it because they are accused of a crime must perceive that they are being treated fairly with justice. Certainly not in the sense that all accused Defendants praise the judicial system stating that they received just treatment in an absolute sense.

Unfortunately, many in our society are convicted beyond a reasonable doubt of a crime and will, even if treated fairly with justice, be sentenced to long periods of incarceration.

Even more unfortunately, all persons accused of a crime do not receive constitutionally effective assistance of defense counsel. This results in some persons being convicted beyond a reasonable doubt of crimes who would not have been convicted beyond a reasonable doubt had they received effective assistance of counsel.

That is the dilema facing this Honorable Court. If all allegations of ineffectiveness must be determined in a collateral proceeding, the now sentenced Defendant must begin any sentence of incarceration because they are no longer entitled to bail pending direct appeal. A sentenced Defendant may spend years

incarcerated to later have a collateral proceeding result in a finding of constitutionally ineffective assistance of counsel resulting in a new trial. After years of incarceration, the now accused Defendant may receive a new trial at which he is found not guilty because the evidence was argued to be insufficient to convict beyond a reasonable doubt.

It may well be perceived that this judicial system allowed an individual who received constitutionally ineffective assistance of counsel at his first trial was punished by being incarcerated during collateral proceedings for having (unknown to him) constitutionally ineffective assistance of counsel.

A better rule would be to remand for a hearing on ineffectiveness when 1) new counsel raises trial counsel's ineffectiveness initially on direct appeal, and 2) where the appellate record

shows a prima facie case of ineffectiveness of trial counsel.

The appellate record in this case shows at least a prima facie level of unconstitutional ineffective assistance of counsel. The issue of unconstitutional ineffectiveness of counsel was raised in the Supreme Court of Pennsylvania, see Appendix page Ap 45. Ineffectiveness in failing to obtain the "prior record, current and past plea bargains and records of any outstanding charges" known to the prosecution against Informant Builder were raised, see Appendix pages Ap 65-67.[5] See also Appendix pages Ap 69-76.

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[5]The Pennsylvania Supreme Court often refers to ineffectiveness of counsel without referring to the Sixth Amendment of the United States Constitution, but the analysis is always conducted under the Sixth Amendment, see Commonwealth ex rel. Washington v. Maroney, 427 Pa. 599, 235 A.2d 349 (1967). See for example

Continued on Page 20

The issue of ineffectiveness in failing to allege insufficient evidence of an intent to deliver two (2) tablets of LSD and 0.5 grams of methamphetamine was also raised and argued, Appendix pages Ap 57-60.

At trial, Mr. Arenella defended on the theory that Informant Builder (in an attempt to save himself) planted certain drugs in his home while Mr. Arenella was in Florida. Informant Builder learned that the Arenella family was leaving for Florida on June 22, 1987 and told Trooper

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Footnote 5 Continued from Page 19

Commonwealth v. Fassett, 496 Pa. 529, 437 A.2d 1166 (1981); Commonwealth v. Pettus, 492 Pa. 558, 424 A.2d 1332 (1981); Commonwealth v. Cargo, 498 Pa. 5, 444 A.2d 639 (1982); Commonwealth v. Seachrist, 478 Pa. 621, 387 A.2d 661 (1978); but see also Commonwealth v. Jones, 391 Pa. Super. 292, 570 A.2d 1338, reargument denied, appeal denied, 596 A.2d 155 (cites Cargo, supra. and Seachrist, supra. at Jones, supra., 570 A.2d at 1344).

Howel that they would not return for about three (3) weeks, see pages 27 and 32.

Further, Mr. Arenella testified that while he did possess six (6) grams of marijuana found in his suitcase, he did not know that the 774 grams of marijuana (bags of marijuana), two (2) tablets of LSD, 0.5 grams of methamphetamine or 36.5 grams of cocaine were in his house, see pp. 30-31. Mr. Arenella testified that these drugs were found in his basement. He denied delivering cocaine to Informant Builder on either June 22 or July 20, 1987, see pp. 28-30. The jury was asked to infer that these "basement" drugs were planted when Mr. Arenella's family was in Florida.[6]

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[6]Although it is not being argued herein, the jury never heard available testimony not offered at trial that a College Professor who was a friend of the Arenellas knew they were in Florida over the 4th of July, saw suspicious lights in the Arenella home basement. He was suspicious enough to stop, but failed to investigate further. See Appendix pages Ap 39-41. Trial Court Opinion of November 7, 1990.

At trial even though he made written request for Informant Builder's criminal record, plea bargain terms, and outstanding charges known to the prosecutor, see Appendix page Ap 28, trial counsel failed to object on these grounds to Informant Builder's testimony. This failure to object and preserve for appeal is clear on the record. There are also strong indications in the record that Informant Builder had sold cocaine, p. 34, and committed other offenses known to authorities because Trooper Howel had identified him in his own investigations, pp. 36-37. Informant Builder also arguably had a "deal" to testify about Mr. Arenella, but denied it, pages 33 and 36. Whether or not Informant Builder had committed any crimes in Columbia County known to prosecutors is still a mystery. Informant Builder was asked only if he had

been arrested or charged with a crime in Columbia County, p. 34.

Informant Builder was a key witness for the Commonwealth. Failure to disclose information that may be used to impeach him or show his bias must be disclosed. Giglio v. United States, 405 U.S. 150, 92 S.Ct. 763, 31 L.Ed.2d 104 (1972), Brady v. Maryland, 373 U.S. 83, 83 S.Ct. 1194, 10 L.Ed.2d 215 (1963). If Informant Builder was told he would not be prosecuted for crimes known to Trooper Howel, Giglio, supra. requires their disclosure.

Mr. Arenella was also convicted of possession with the intent to deliver two (2) tablets of LSD, Count 6, and 0.5 grams of methamphetamine, see the excerpt from the presentence report, p. 39.

It is readily apparent that the quantities of these drugs are small. There was no evidence that these amounts were intended for delivery. To the

contrary, the appellate record in the form of notes of trial testimony shows that Informant Builder was never involved with transactions regarding the LSD or methamphetamine, see p. 37. Trooper Howel admitted on cross-examination that Builder had engaged with activity involving only cocaine and only evidence of possession of LSD and other substances, p. 38.

Mr. Arenella received a concurrent sentence of two and one-half to five years for intending to deliver two (2) tablets of LSD, Count Six, pp. 39-41. He received a concurrent sentence of two and one-half to five years for intending to deliver 0.5 grams of methamphetamine.

Only speculation could have permitted a guilty verdict of possession with intent to deliver two (2) tablets of LSD and 0.5 grams of methamphetamine. The very fact no challenge to the sufficiency

of the evidence of the intent to deliver two (2) tablets of LSD or 0.5 grams of methamphetamine makes it more likely that trial counsel was in other ways constitutionally ineffective.

This fact situation is a situation that should have certiorari granted in order to direct the states that when a review of the record indicates a prima facie showing of constitutional ineffectiveness that the state courts must remand such cases for an evidentiary hearing on ineffectiveness. Such a holding will limit remands for evidentiary hearings to these cases making it more likely that actual constitutional ineffectiveness did occur. Cases that don't meet such a showing would not have ineffectiveness claims determined on direct appeal.

Such a ruling makes a logical distinction to avoid years of incarceration during collateral attack for

petitioners (appellants) who can make a reasonably strong showing that they had constitutionally ineffective trial counsel, but still allow others to raise collaterally the issue of ineffectiveness while incarcerated. After remand, it would also be the time to apply the harmless error doctrine to ineffectiveness found at Satterwhite v. Texas, 486 U.S. 249, 108 S.Ct. 1792, 100 L.Ed.2d 284 (1988).

Prior to remand for an evidentiary hearing on ineffectiveness, the factual and legal extent of the constitutional ineffectiveness is not known and this harmless error doctrine would almost certainly apply before the complete record of ineffectiveness is developed on remand.

Respectfully submitted,

By: _____
Joseph M. Devecka
Attorney for Petitioner

FRANK ARENELLA DIRECT EXAMINATION BY TRIAL COUNSEL, MICHAEL LYNN, NOTES OF TRIAL TESTIMONY, pp. 252-253

Q. What did he say to you on that first call?

A. I didn't talk to him.

Q. You never talked to him?

A. I didn't talk to him until the 22nd.

* * *

Q. What was the discussion he had with you when you returned the call? Did he talk to you on the phone?

A. How was I doing and whatever, and said he wanted to speak to me. "How are you doing? What is happening?" You know, he wanted to stop by. I said it was not a good time. I was going on vacation.

Q. Did you tell him when you would be going away?

A. I said, "Yes, I'm leaving today."

Q. What did he say?

A. He said he wanted to talk to me. I said today wasn't a good day. That was where we left it. We were getting ready to go. He pops in anyway and came in, you know. We returned around--my

FRANK ARENELLA DIRECT EXAMINATION BY TRIAL COUNSEL, MICHAEL LYNN, NOTES OF TRIAL TESTIMONY, pp. 252-253

A. (Continued)
wife went out to get the kids food and packed up. We had a beer. We really didn't talk about anything. Just talked.

Q. Did he offer you drugs?

A. No.

Q. Did you offer him drugs?

A. No.

Q. Can you estimate how long he was in your house on that date?

A. I would say twenty minutes.

FRANK ARENELLA DIRECT EXAMINATION CONTINUED, NOTES OF TRIAL TESTIMONY p. 255

Q. What was the next time you saw him?

A. Like two days after I got back, a day after I got back.

Q. Where did you see him at?

A My house.

Q. How is it that he happened to be at your house pretty much soon after you got back? I mean like within several days after.

FRANK ARENELLA DIRECT EXAMINATION
CONTINUED, NOTES OF TRIAL TESTIMONY
p. 255

A. Again, he called me and you know said he tried to get a hold of me and you know what was going on. I said we were having friends over and picnicking. And, he wanted to stop by. I said, you know, we might be going out. And, I didn't really--I really didn't know what he wanted. Anyway, he comes by anyway and I am not home.

FRANK ARENELLA DIRECT EXAMINATION
CONTINUED, NOTES OF TRIAL TESTIMONY
p. 256

Q. When you got home from shopping, describe the circumstances that were present at your home vis-a-vis Mr. Builder?

A. His car was parked in the front of the house. I don't remember exactly. I pulled in the driveway. I got a slip and slide for the kids. The kids were out slipping and sliding and my wife and Bob and this other girl Lori were watching the kids play.

Q. Go ahead.

A. So, we had a beer and he talked about how he was going to quit coaching and starting a new job and was going to sell insurance

FRANK ARENELLA DIRECT EXAMINATION
CONTINUED, NOTES OF TRIAL TESTIMONY
p. 256

A. (Continued)
or something to that effect. I believe another friend of mine just stopped teaching. We had a couple of beers and I told him I was getting ready to finish school and I was thinking about starting a contracting business maybe. I wanted to start it myself and you know we were in the house for awhile. He was having another beer. We were in the house for a couple minutes. Then, out of the blue he was going to leave again.

Q. Boom he was gone?

A. Yeah.

FRANK ARENELLA DIRECT EXAMINATION
CONTINUED, NOTES OF TRIAL TESTIMONY,
pp. 266-267

Q. Were you or were you not on June 22 or July 20 or any time in between in knowing possession of cocaine?

A. No.

Q. Same question, marijuana?

A. Yes.

Q. How much marijuana?

A. What they found, six grams.

FRANK ARENELLA DIRECT EXAMINATION
CONTINUED, NOTES OF TRIAL TESTIMONY
pp. 266-267

Q. What about these large bags?

A. No.

* * *

Q. How about LSD?

A. No.

Q. Methamphetamine?

A. No.

Q. Unidentified residue, whatever that is?

A. No.

Q. Methamphetamine, what did you say?

A. No.

Q. Hashish?

A. No.

STATE TROOPER HOWEL CROSS-EXAMINATION
BY TRIAL ATTORNEY MICHAEL LYNN, ESQUIRE
NOTES OF TRIAL TESTIMONY, p. 126

Q. Did you hear anything about Mr. Arenella going out of town that day, the 22nd?

A. Mr. Builder informed me that he was informed by Mr. Arenella that Mr. Arenella would be going on vacation to Florida and wouldn't be around for about three weeks.

Q. When was he so informed?

A. When was he informed?

Q. When was he told?

A. On June 22, when he was there for the first time under my direction.

ROBERT BUILDER, CROSS-EXAMINATION BY
TRIAL COUNSEL, MICHAEL LYNN, ESQUIRE
NOTES OF TRIAL TESTIMONY, pp. 70-71, 80

Q. There were other people arrested when you were arrested on the 12th?

A. Right.

Q. Your testimony is that you just happened to be there?

A. I just walked in to pick up stuff I bought and paid for the night before.

Q. Quarter of an ounce?

A. Right.

Q. Why is it then you were charged and pled to possession with intent to deliver? You were buying for yourself, right?

A. I was buying for myself. They said due to the amount that it is automatically possession with intent to deliver.

Q. The docket itself seems to reflect delivery in Northumberland County?

A. I delivered to the state police. That is the only person I delivered it to.

Q. You are talking about on the 12th?

A. Right.

ROBERT BUILDER, CROSS-EXAMINATION BY TRIAL COUNSEL, MICHAEL LYNN, ESQUIRE
NOTES OF TRIAL TESTIMONY, pp. 70-71, 80

Q. Did you sell cocaine?

A. Did I sell cocaine? Yes.

ROBERT BUILDER, RE-DIRECT EXAMINATION BY ASSISTANT DISTRICT ATTORNEY, MRS. PEALER-WENZEL, ESQUIRE, NOTES OF TRIAL TESTIMONY, pp. 108-109

Q. Mr. Builder, there was some question about the charges that have been filed against you. Where were you arrested and where were those charges filed?

A. I was arrested in Mount Carmel. It was filed in Northumberland County.

Q. Have you ever been charged or arrested or charged with anything in Columbia County?

A. No.

ROBERT BUILDER DIRECT EXAMINATION BY ASSISTANT DISTRICT ATTORNEY, MRS. PEALER-WENZEL, ESQUIRE, NOTES OF TRIAL TESTIMONY, pp. 67-68

Q. Mr. Builder, you mentioned previously about being arrested for cocaine?

ROBERT BUILDER, DIRECT EXAMINATION
BY ASSISTANT DISTRICT ATTORNEY,
MRS. PEALER-WENZEL, ESQUIRE, NOTES
OF TRIAL TESTIMONY, pp. 67-68

A. Right.

Q. What was the outcome of that arrest?

A. The outcome of that arrest was I was arrested for possession with intent to deliver cocaine and I had a six-month jail sentence I just got done serving.

Q. You pleaded guilty to those charges?

A. Right.

Q. You served your jail sentence?

A. Right.

Q. Are you on parole now?

A. Right.

Q. You have already been sentenced?

A. Sentenced and finished doing my sentence.

Q. Have any promises been made to you in exchange for your testimony here today?

A. No.

STATE TROOPER HOWEL CROSS-EXAMINATION
BY TRIAL COUNSEL, MICHAEL LYNN, ESQUIRE
NOTES OF TRIAL TESTIMONY, pp. 110, 120

Q. Tell the Jury, if you will, how it is that you first came in contact with Mr. Builder?

A. I was conducting an investigation in Northumberland County and drug trafficking individuals. Mr. Builder was at one point obtaining cocaine from an individual, the guy I had that morning served a search warrant on, and, gave Mr. Builder a ride and he was arrested at that time.

Q. Was Mr. Builder at that time currently under investigation by you?

A. I had known of his activities, yes, sir.

* * *

Q. In what context did you know him? Socially, professionally, admiration at a distance?

A. Again, his name came up in an investigation that was going on over a period of maybe six or seven months. So, I made it a point that I would eyeball Mr. Builder. And, I did that so I knew who he was. When I saw him I was able to recognize him as being Robert Builder. Whether he knew me, it is quite possible we

STATE TROOPER HOWEL CROSS-EXAMINATION
BY TRIAL COUNSEL, MICHAEL LYNN, ESQUIRE
NOTES OF TRIAL TESTIMONY, pp. 110, 120

A. (Continued)
may have some mutual friends that they pointed me out to him. That's quite possible, but, I don't know that.

ROBERT BUILDER, CROSS-EXAMINATION BY
TRIAL COUNSEL, MICHAEL LYNN, ESQUIRE
NOTES OF TRIAL TESTIMONY, pp. 81-82

Q. LSD, Vitamin B-12, tea difusers, and the like, a little bit of methamphetamine. Now, were you ever involved, just by your own testimony, credible or not, but were you ever involved in any transaction with Mr. Arenella as with regard to the LSD?

A. No.

Q. Marijuana?

A. No.

Q. Methamphetamine?

A. No.

Q. Vitamin B-12?

A. No.

* * *

STATE TROOPER HOWEL, CROSS-EXAMINATION
BY TRIAL COUNSEL MICHAEL LYNN, ESQUIRE
NOTES OF TRIAL TESTIMONY, pp. 151-152

Q. Did he tell you when you talked with him that he had knowledge of Mr. Arenella or in fact engaged in activity as regard to other controlled substances other than cocaine?

A. No, sir.

Q. Was there any suspicion that Mr. Arenella, outside of what Mr. Builder was telling you, had ever been engaged in any activity regarding possession of LSD or any of those other substances you found?

A. Yes, sir.

EXCERPT FROM THE PRESENTENCE
INVESTIGATION USED AT SENTENCING

The deft. is charged in a Criminal Complaint filed 12/24/87 by Trooper Howard P. Howal of the PSP Region IV Strike Force. The deft. has specifically been convicted at jury trial of the following:

Count #1, Possession of a Controlled Substance (M) 6.7 grams cocaine.
Count #2, Delivery of a Controlled Substance (F) 6.7 grams cocaine.
Count #3, Possession of a Controlled Substance (M) 2.2 grams cocaine.
Count #4, Delivery of a Controlled Substance (F) 2.2 grams cocaine.
Count #5, Possession with Intent to Deliver a Controlled Substance (F) 774.5 grams Marijuana.
Count #6, Possession with Intent to Deliver a Controlled Substance (F) 2 tablets LSD.
Count #7, Possession with Intent to Deliver a Controlled Substance (F) 0.5 grams Methamphetamine.
Count #9, Possession with Intent to Deliver a Controlled Substance (F) 36.5 grams cocaine.
Count #10 Possession of Drug Paraphernalia (M) Ohaus Scale, Mannitol and Inosital (cutting agents for controlled substances), plastic packets for packaging controlled substance.

COMMONWEALTH OF PENNSYLVANIA	: IN THE COURT OF COMMON PLEAS OF THE 26th JUDICIAL
vs.	: DISTRICT OF PA.
FRANK J. ARENELLA, JR.,	: COLUMBIA COUNTY BRANCH : No. 44--1988 : Charge: Delivery of a Controlled Substance, Cocaine; Possession of Controlled Substance, Cocaine; Possession with Intent to Deliver Controlled Substance; Possession with Intent to Use Drug Paraphernalia
	: IN THE SUPERIOR COURT OF PENNSYLVANIA : No. 01120 : PHILADELPHIA : Resentencing on Count Six

Rudolph L. Catalan, Esquire, Assistant District Attorney for the Commonwealth of Pennsylvania.

Michael R. Lynn, Esquire, Attorney for Defendant.

RESENTENCING

AND NOW, to wit, this 15th day of November, 1990, it is hereby DIRECTED that the Defendant pay the costs of prosecution, and undergo imprisonment in a state correctional institution for an indeterminate period of not less than two-and-a-half years, nor more than five years, with said jail sentence to run concurrent to the jail sentence imposed to case number 44--1988, count two.

BY THE COURT:

/s/Hon. Gailey C. Keller,
Judge

COMMONWEALTH OF PENNSYLVANIA	: IN THE COURT OF
	: COMMON PLEAS OF
	: THE 26th JUDICIAL
vs.	: DISTRICT OF PA.
	:
FRANK J. ARENELLA, JR.,	: COLUMBIA COUNTY
	: BRANCH
	: No. 44--1988
	:
	: Charge: Delivery
	: of a Controlled
	: Substance,
	: Cocaine;
	: Possession of
	: Controlled
	: Substance,
	: Cocaine; Posses-
	: sion with Intent
	: to Deliver
	: Controlled
	: Substance;
	: Possession with
	: Intent to Use
	: Drug
	: Paraphernalia
	:
	: IN THE SUPERIOR
	: COURT OF
	: PENNSYLVANIA
	: No. 01120
	: PHILADELPHIA
	: Resentencing
	: on Count Seven

Rudolph L. Catalan, Esquire, Assistant District Attorney for the Commonwealth of Pennsylvania.

Michael R. Lynn, Esquire, Attorney for Defendant.

RESENTENCING

AND NOW, to wit, this 15th day of November, 1990, it is hereby DIRECTED that the Defendant pay the costs of prosecution, and undergo imprisonment in a state correctional institution for an indeterminate period of not less than four years, nor more than eight years, with said sentence to run concurrent to the sentence imposed to case number 44--1988, count two.

BY THE COURT:

/s/Hon. Gailey C. Keller, Jr.